

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: COMPLAINTS OF ACCESS )  
INTEGRATED NETWORK, INC )  
AND XO TENNESSEE, INC. )  
AGAINST BELL SOUTH )  
TELECOMMUNICATIONS, INC. )

DOCKET NO. 01-00868

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OFFICE OF THE  
EXECUTIVE SECRETARY

**POST HEARING BRIEF OF XO TENNESSEE,  
ACCESS INTEGRATED NETWORK, INC. AND ITC^DELTACOM**

To assist the Hearing Officer, this brief is submitted in the form of proposed findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. Beginning in May, 1999, (tr. 148), BellSouth Select, Inc. ("BellSouth Select"), an affiliate of BellSouth Telecommunications, Inc. ("BST") began offering to Tennessee customers the opportunity to enroll in one of several BellSouth Select programs. Designed to retain existing customers (tr. 135), and, later, to win back former customers (tr. 279), the non-tariffed program offers members the opportunity to earn rebates and discounts in exchange for the purchase of regulated telecommunications services.

Select members receive superior repair service (discussed in paragraph 5 below) along with a variety of discounts, rebates, and other benefits. First, regardless of the number of "points" a member has earned, the program offers each member an opportunity to receive "special discounts" on non-BST products such as discounts on magazine subscriptions, airline tickets, office equipment, hotels, car rentals and other items of value. See Attachment 1. Second, once a member has accumulated Select points through the purchase of both regulated and non-regulated services, the member may redeem those "points" for further discounts on non-

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regulated products and services, credit against the customer's total BST bill, or cash. *See* Collective Attachment 2.<sup>1</sup>

2. The Select programs which are the focus of these complaints are offered to retail business customers. (*See* Response to XO's Second Data Request, Item 6, hereafter referred to as Item 6). To join any of the programs, a customer must (1) purchase from BST or an affiliate at least one non-regulated service (such as a Yellow Page advertisement, BellSouth's internet service, or inside wire maintenance), (2) have a minimum total bill of at least \$100 or \$250 a month, depending on the program and (3) agree to a permanent waiver of the customer's proprietary network information ("CPNI").<sup>2</sup> *Id.*

Today, there is only one Select program being offered in Tennessee, "Select Platinum." It has 11,500 members. Tr. 177. That number represents approximately 10% of BellSouth's business customers in Tennessee. Tr. 257.

3. "Regular" Select points are earned through the purchase of regulated and non-regulated BellSouth products. In the Platinum program, for example, a customer earns one point for each dollar spent on BST products, both regulated and non-regulated, and one point for every three dollars spent in Yellow Page advertising. *See* Attachment 2 and Item 6. Until recently, a member was also able to earn "bonus" points in exchange for such things as ordering new regulated services, joining the Select program or staying with the program a year. Deposition of Richard Tice, pp. 58-59. Sometimes, bonus points were awarded simply as a "service adjustment if a customer was unhappy for some reason." *Id.* *See* Tr. 266-267.

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<sup>1</sup> Effective Nov. 1, 2001, the option of redeeming points for credit on the BST bill was eliminated and replaced with the option to receive the equivalent amount of cash in the form of a check from BellSouth Select. Tr. 137

<sup>2</sup> Effective Jan. 1, 2002, BellSouth no longer requires a Select member to waive his CPNI.

4. As previously discussed, a member may redeem his Select points for a variety of discounts on products and services including, until recently, credit on the customer's BST bill and, under the current program, a cash payment. Attachment 2 and Item 6. Each point has an estimated value of \$0.025 or 2 ½ cents. *Id.* Thus, a customer with 10,000 points is entitled to a cash rebate of \$250. *Id.*

In Tennessee, BellSouth awarded \$155,000 worth of bonus points to Select members in 2001. Tr. 264-265. One Tennessee customer received 400,000 bonus points which entitled the customer to a rebate of \$10,000. Tr. 273-274. Since the Select program began, Select members in Tennessee have redeemed more than 31 million Select points in exchange for benefits worth approximately \$784,000. See Response to XO's Second Data Request, item 1, Attachment 1.D.

5. Select members are also assigned a "Select Service manager" and are told that the Select Service Manager will provide better repair service in case of a chronic service problem. See Attachment 3. According to BellSouth, the Select Service Manager "gives certain Platinum level members one point of contact for repair issues after the repair has been escalated through the normal channels." *Id.* For these Platinum members, the Select Manager will "handle escalations, "take ownership of the repair escalation trouble until it is resolved," "status the customer during the process," and "be available 24x7 to assist customers." *Id.* In some cases, the Select Service Manager is instructed to contact new Platinum members to welcome them into the program. *Id.* Asked to describe the benefit of having a Select Service Manager, BellSouth witness Don Livingston testified in his deposition (at 24):

The benefit to the customer is that there is an individual, or a Select service manager that will be responsible for a repair situation a customer is in, and will keep the customer statused about putting that - when the repair person, the technician will arrive and whether the trouble has been cleared. That's the benefit that they get, greater frequency of communication after there is an escalation.

6. The Select program is offered throughout the nine BellSouth region. It is not tariffed. Tr. 178-270.

### CONCLUSIONS OF LAW

7. It is illegal in Tennessee for a public utility (a) to give customers a rebate on the purchase of regulated services; (b) to give some customers an "unreasonable preference or advantage" over others; and (c) to charge less than the tariffed rates for regulated services. The rules of the TRA require that a telephone company must file tariffs which describe all "rates and charges for each class of service rendered" and all "rules and regulations of the utility that in any manner affect the rates charged . . . or that define the extent or character of the service to be given." Finally, the TRA has ordered that BellSouth's regulated, retail services be made available for resale at a discounted price. BellSouth's Select program implicates each of these statutes, rules and orders.

A. Rebates. T.C.A. § 65-4-122 prohibits a public utility from giving rebates, "directly or indirectly," on the purchase of regulated services.<sup>3</sup> The statute was enacted in 1897 as part of the original law creating the "Railroad Commission of the State of Tennessee," predecessor of the TRA. The language of the anti-rebate statute was copied from Section 2 of the first Interstate Commerce Act of 1887 and has remained virtually unchanged since its enactment.<sup>4</sup> Because of the similarity, in both language and purpose, between the state and

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<sup>3</sup> The anti-rebate statute refers to "any common carrier or public service company." As early as 1910, the Tennessee Supreme Court held it "well settled" that telephone and telegraph companies are "common carriers" and cannot give preferences to some customers or discriminate against others. *Vaught v. East Tennessee Telephone Co.*, 130 S.W.1050, 1051 (Tenn. 1910). See also, *Breeden v. Southern Bell*, 285 S.W. 2d 346, 349 (Tenn. 1955) holding that Southern Bell Telephone and Telegraph Co., a predecessor of BST, was a "common carrier" under Tennessee law, comparable to "railroad companies and other similar utilities" and "cannot discriminate in favor of one of its patrons against another."

<sup>4</sup> Attached to this brief is a copy of Chapter 10 of the Public Acts of 1897, the statutes which created the Tennessee Railroad Commission. Attachment 4. The prohibition on rebates is contained in Section 15 and is nearly identical  
(footnote continued on following page ...)



federal statutes, the Tennessee Supreme Court has held that “practically all the decisions upon the construction of the federal statutes are authoritative upon the construction of ours.” *New River Lumber Co. v. Tenn. Railway Co.*, 238 S.W. 867, 872 (Tenn. 1922).<sup>5</sup>

The statutory prohibition against rebates “was designed to compel every carrier to give equal rights to all shippers over its own road and to forbid it by any device to enforce higher charges against one than another.” *Wright v. United States*, 17 S. Ct. 822, 823 (1897). In that case, a railroad offered one shipper, but no others, a rebate of 3 ½ cents per hundredweight in order to obtain the shipper’s business. The Court held this a violation of Section 2 of the Interstate Commerce Act which “prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefore.” *Id.*, at 824. The Supreme Court reiterated this language in *I.C.C. v. Alabama Midland Railroad Co.*, 168 U.S. 144, 18 S. Ct. 45 (1897) and again in *I.C.C. v. Delaware, Lackawanna & Western Railroad Company*, 220 U.S. 235, 31 S. Ct. 392, 398 (1911). In both cases, the Court held that the anti-rebate statute prohibited a carrier from charging one shipper more than another for the same service.

In *United States v. Lehigh Valley Railroad Company*, 222 F. 685 (S.D. N.Y., 1915) the District Court held that the payment of a commission by a railroad to a large shipper, where the commission was calculated as a percentage of the shipper’s tariffed charges, was an illegal rebate

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(... footnote continued from previous page)

to Section 2 of the first Interstate Commerce Act as it existed in 1897. See, *Wright v. United States*, 17 U.S. 512, 17 S. Ct. 822 (1897) quoting, in its entirety, Section 2 of the Interstate Commerce Act. The language in the current statute, T.C.A. § 65-4-122(a), is virtually the same.

<sup>5</sup> In that case, the Court declared it illegal for a railroad to offer a non-tariffed, special rate to a particular shipper. “No shipper and no carrier can make a special contract for special rates independently of the [Tennessee] Commission.” *Id.*, at 875.

in violation of Section 2. Although the railroad argued that the commission was intended merely as payment to the shipper for referring business to the railroad, the court held that the commission was, nevertheless, an illegal rebate because the amount of the shipper's commission was calculated "by the freight value of his shipments." The Court continued. "[T]he abuse of granting commissions to any large shipper is so patent and so ancient as not to require further comment." *Id.*, at 686.

Rebates, of course, can also be given indirectly. The anti-rebate statute has been held to prohibit a carrier from selling property to a shipper for less than market rate, buying property at more than market value, giving better service, faster service, or any other special advantage to favored shippers. *AT&T v. Central Office Telephone, Inc.*, 118 S. Ct. 1956, 1963 (1998). It is an illegal rebate for a carrier to give an expense-paid trip to the Kentucky Derby as a reward to an employee of a large shipper. *U.S. v. Key Line Freight*, 404 F. supp. 888 (W.D. Michigan, 1975). A carrier cannot disguise a rebate in the form of a discounted price on a non-regulated service. *New York, New Haven and Hartford Railroad v. I.C.C.*, 200 U.S. 361, 26 S. Ct. 272 (1906) (holding that a railroad may not sell coal to one shipper at a cheaper price than it sells it to another shipper). As one commentator explained, "[W]hen the purchaser is a user of the utility service, a concession to him in the price of the non-utility good is the same, in effect, as a concession to him in the rates for utility service." I. Lake, *Discrimination by Railroads and Other Public Utilities*, at p. 150 (1947).

In this case, BellSouth's Select program "is a rebate, plain and simple. You spend \$100, they give you two and a half dollars back. You spend \$200, they give you \$5 back, and on and on and on . . . . When you pay money on the tariffed rate, they give you money back. If that's not a rebate, then the word 'rebate' has no meaning." Testimony of Joseph Gillan, tr. 54-55.

BellSouth makes argument that, at least as the program operates today, a customer cannot redeem more value than he has spent on non-regulated services. If a customer, for example, has spent \$4000 on regulated services, he would normally be eligible for a \$100 cash rebate. But, as the program now operates, the customer will not be able to claim the full amount of the rebate until the customer has spent at least \$100 on unregulated services. Tr. 20-21. At that point, the customer may claim the entire rebate. *Id.* Thus, according to BellSouth, the customer who receives a \$100 check is not really getting a rebate for having purchased \$4,000 of tariffed services but is receiving instead a complete refund on his purchase of \$100 of unregulated service. *Id.*

As the preceding cases make clear, however, the statutes prohibit BellSouth from giving any rebate, "directly or indirectly," which results in one customer paying more or less than another for the same regulated service. If, for example, BellSouth offers one customer, but not others, a \$100 Yellow Page advertisement at no charge in exchange for the purchase of \$4,000 of regulated telecommunications services, BellSouth has offered an illegal rebate. Otherwise, as the case precedents indicate, it would be a simple matter for the carrier to discriminate among shippers by giving secret discounts or rebates on non-regulated services in exchange for the purchase of regulated services.

What makes the Select program an illegal rebate is that a customer is able to earn points (and thereby obtain rebates and discounts) as a direct result of the customer's purchase of regulated services. As long as the rebates are tied to the purchase of regulated services, the rebates are illegal. The fact that the customer is also required to purchase an unregulated service equal to the value of the rebate is irrelevant. BellSouth cannot simply give away unregulated products and services in order to persuade customers to subscribe to regulated services. That is the whole purpose of the anti-rebate statute. As Mr. Gillan said, "It's how you earn the credit

that makes it a rebate, now you spend it.” Tr. 98 As long as the customer is able to earn rebates in exchange for the purchase of regulated services, the carrier is, in effect, “manipulating the price of the regulated service” in violation of the statute. Tr. 69.

The evidence in this case shows that BST has made a total of 4,582 rebates to Tennessee customers in exchange for the purchase of regulated telecommunications services.<sup>6</sup> Each rebate is a violation of the statute.

B. Preferences. T.C.A. § 65-4-124(c) prohibits a carrier from giving “an undue or unreasonable preference or advantage to any particular person.” Like the anti-rebate statute, Tennessee’s prohibition of “unreasonable preferences” was also borrowed directly from the 1887 Interstate Commerce Act.<sup>7</sup>

As explained by the Supreme Court in *I.C.C. v. Alabama Midland*, *supra*, at 49, the difference between the anti-rebate statute and the prohibition on preferences is that the former is a strict prohibition against discrimination among shippers using the same line and the same service while the latter does not prohibit all preferences but only those which are “unreasonable” or “undue” and allows a court or regulatory commission to take into account “the fact of competition.” A carrier, for example, might properly charge and collect the tariffed rates (and therefore not violate the anti-rebate statute) but still be found to have “unreasonable” rates if the carrier’s tariffs give an “undue” preference to some shippers or some communities over others.

<sup>6</sup> Attachment 1.D filed by BellSouth in response to XO’s Second Data Request lists 4,583 rebates. In a late-filed exhibit on February 15, 2002, BellSouth stated that two of the rebates on the list were made by customers who had purchased no regulated services from BellSouth. Therefore, all other rebates were earned, at least in part, by the purchase of regulated services.

<sup>7</sup> See, *Louisville and Nashville Railroad v. United States*, 282 U.S. 740, 51 S. Ct. 297, 301 at footnote 5 (1930) quoting the language of Section 3 of the Interstate Commerce Act. The language is virtually identical to Section 17 of the Tennessee Public Acts of 1897 (attached) and to the language of the state statute today. See also, *Southern Railway Co. v. Pentecost*, 330 S.W. 2d 331, 325 (Tenn. 1959) describing Sections 2 and 3 of the Interstate Commerce Act as “the progenitors of the Tennessee sections.”

For example, in the case *(Tennessee Central Railway Co. v. Ph)*, 198 S.W. 2d 289 (Tenn. Ct. App.), the Court upheld the findings of the Tennessee Commission that the railroad's tariffs gave an undue preference to Old Hickory, Tennessee (where a large shipper was located) and discriminated against Nashville. As a defense to a charge of preferential treatment, a carrier may establish that there are differences "in conditions and circumstances," including competition from other carriers, which justify different rates. See *Southern Railway Co. v. Pentecost*, 1330 S.W.2d 331, 335 (Tenn. 1959). See also, *Competitive Telecommunications Association v. FCC*, 998 F.2d 1058 (D.C. Cir., 1993) ("The core concern in the non-discrimination area has been to maintain equality of pricing for shipments subject to substantially similar costs and competitive conditions.")

In Tennessee, BellSouth has approximately 100,000 business customers (tr. 257), of whom 11,500 are in the Select program. Tr. 177. BellSouth has made no showing in this record that it was necessary to offer those 11,500 customers a preferential rate or preferential service because of competitive necessity or for any other legitimate reason. To the contrary, BellSouth witnesses stated reportedly that the program was available to any eligible customer. Tr. 135, 279. Most Select members were enrolled as a result of "inbound calls" by the customer to BellSouth. "So whenever the service representative or account executive saw the "I" ["Invite"] on the customer's record, they invited them to be part of the program." Tr. 160-161. Even the Key Customer/Select combination, which was targeted at CLEC customers, was also made available to existing BellSouth customers. Deposition of Robin Porter at pp. 31-33.

Under these circumstances, BellSouth has provided no justification for giving a preference in rates and service to 11,500 of its business customers. Each such preference is a violation of the statute.

C. Changing Tariffed Rates. T.C.A. § 65-5-2 requires that rates, once approved by the TRA, “shall be imposed, observed, and followed thereafter by any public utility.” See *New River Lumber Co. v. Tennessee Railway Co.*, *supra*, at 869. Under both state and federal law, the tariff filing requirement is “the heart” of the regulation of common carriers and “utterly central” to the enforcement of the prohibition against discrimination. *MCI Telecommunications v. AT&T*, 512 U.S. 231, 114 S. Ct. 2223, 2231 (1994). Under the century old “filed rate” doctrine, a rate regulated carrier must file rates with the appropriate state and federal regulatory bodies and cannot, for any reason, charge more or less than the tariffed rate. *Maislin Industries v. Primary Steel, Inc.*, 497 U.S. 116, 110 S. Ct. 2759, 2766-2768 (1990).

It is undisputed in this case that, as part of the Select program, sixty-three Tennessee customers were offered and accepted “three months of free service” in exchange for subscribing to BST’s Key Customer Discount program. Tr. 137, 178-179. Some customers received the free months of service. Others have been told they will receive an equivalent amount in cash. *Id.*, Item 6. BellSouth admits that the offering of free service is “contrary to the terms of the applicable tariff” (see Answer of BST, paragraph 3) and a “mistake in judgment.” Tr. 199.

As a BellSouth witness acknowledged, there is no difference, from a customer’s perspective, between receiving a credit on his bill sufficient to offset the price of his regulated service (*i.e.*, a month of free service) and receiving from BST the equivalent amount of cash. Tr. 276. Each of the 189 free months of service ( 63 times 3) is a violation of the carrier’s tariffs and, therefore, a violation of T.C.A. § 65-5-201.

8. TRA Rules. Pursuant to T.C.A. § 65-5-202, the TRA requires that all rate-regulated carriers file tariffs which must describe all “rates” as well as all “rules and regulations of the utility that in any manner” affect the rates charged or the service provided TRA Rule 1220-4-1-.03.

BellSouth's only explanation as to why the Select program was not tariffed is that "it's an unregulated program." Tr. 275. That is incorrect. The TRA rule plainly requires that the program be included in BST's tariffs. Whether the 2 1/2 % rebate offered to Select members is viewed as a reduction in the tariffed rates (a direct rebate) or as a reduction in the price of a non-regulated service (an indirect rebate), there can be no question that the Select program affects the terms and conditions under which BST sells regulated telecommunications services in Tennessee. BST's failure to include the program in its tariffs "renders the tariffs dead letters." Tr. 55<sup>8</sup>

By filing to submit a tariff for the Select program in May, 1999, BST has violated -- and is continuing to violate -- Rule 1220-4-1-.03 on each day that the program remains in effect.

9. TRA Order on Resale. Pursuant to the requirements of the federal Telecommunications Act, 47 U.S.C. § 251, the TRA has issued an Order in Docket 96-0131 directing BST to make its regulated services available for resale at a discounted, wholesale rate. Order of January 17, 1997.

BellSouth's Select program is offered only to retail customers of BST. Deposition of Richard Tice at 34-36. Carriers who purchase wholesale services from BellSouth have never received any of the discounts and rebates offered to Select members. BellSouth's failure to offer the Select program on a resale basis violates the federal Act and the TRA's order in docket 96-0131 which implements the federal resale requirement.

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<sup>8</sup> Even if BellSouth had filed the Select program with the TRA, it seems unlikely that the agency would have found the preferential repair service and the required waiver of CPNI to be "just and reasonable." But if the Select program had been filed, the agency could at least "have rendered a judgment as to whether [the program] was okay." Tr. 62.

## REMEDIES

The complainants have previously filed (Nov. 13, 2001) a Memorandum concerning "Potential Violations and Proposed Relief" in this docket. As the Memorandum points out, BST is subject to a criminal penalty for violations of the anti-rebate statute and the statute which prohibits preferences. Those violations must be reported to, and prosecuted by, the District Attorney General. T.C.A. § 65-3-120, 121, and 119.<sup>9</sup>

Violations of the TRA's rules and orders are punishable under T.C.A. § 65-4-120. "Each day of any such violation" is a separate offense. This section applies to BST's failure to tariff the Select program and its failure to offer the program for resale.

In addition to these criminal and civil penalties, BST should be directed immediately to discontinue the Select program (under T.C.A. § 65-4-115, no utility shall maintain any "practice" which is "unjust, unreasonable, unduly preferential, or discriminatory") and, pursuant to T.C.A. § 65-5-208(c), should direct BellSouth to remedy the effect of its illegal discrimination by awarding 2 ½ % rebates on the purchase of all BST services to every BST business line customer who was not enrolled in the Select program. Such rebates should be retroactive to May, 1999 when the program started in Tennessee.

Finally, as explained by Mr. Gillan in his direct testimony (tr. 56), BST should be required to pay 2 ½% rebates to all carriers who have purchased wholesale services from BST since May, 1999. Only by ordering such refunds to retail and wholesale customers can the TRA eliminate the effect of BST's illegal conduct. *See Dunlap Lumber v. Nashville, Chattanooga,*

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<sup>9</sup> T.C.A. § 65-3-119(b) refers to any violations of "Chapter 5 of this title." That is evidently a typographical error which occurred in 1995 when the various statutes prohibiting discrimination by utilities were consolidated and moved from Chapter 5 to Chapter 4. *See* Public Acts of 1995, Chapter 305. At that time, the reference in § 65-3-119(b) should have been changed to "Chapter 4." *See also* Sections 26 and 27 of Chapter 10 of the Public Acts of 1897. Attachment 4.



and *St. Louis Railway Co.* 165 S.W. 224 (Tenn. 1914) (holding that the proper remedy for a violation of the statutes prohibiting preferences and rebates was to direct the railroad to offer the same service to the complaining shipper that the railroad had previously offered only to a preferred shipper.)

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

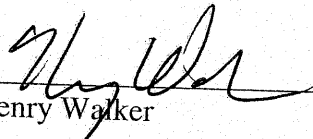
I hereby certify that a true and correct copy of the foregoing document was faxed and/or mailed, postage prepaid, to the following this 14 day of February, 2002.

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**ATTACHMENT**

# Platinum/Silver Discounted Partner Offers

## *Only Select Members have access to these special discounts*

- Business Week Magazine-savings of 80% off cover price, \$39.95 for 51 issues
- Entrepreneur Magazine-low rate of \$15.97 and a free booklet-37 Smart Ways to Manage your Growing Business, Inc.
- Inc. Magazine-1 year subscription plus a complimentary copy of the Guide to Small Business Success for \$12, an 80% savings
- Wall Street Journal- Receive 4 additional weeks with a 13 week subscription for \$49
- Airborne Express- Savings of up to 42% off the competition's published rates on overnight shipping
- Administaff®- 10% off enrollment fee
- COMP USA®- discounts on hardware, software and accessories once customer enrolls
- Sir Speedy Printing Centers- Receive \$15 off any order of \$100 or more
- Viking Office Products®- 10% off any order
- Choice Hotels International- 15% off your stay on brands of Comfort®, Quality®, Sleep®, and Clarion®
- National Car Rental®-Complimentary 1 year Emerald Club®membership for Members, a \$50 value
- Suburban Lodge- Save \$5 on a daily rate or \$20 on a weekly rate
- PC Flowers & Gifts®-15% off any order
- P.R.O. Golf Schools Resort Packages- Save 15% with a P.R.O. Golf School 2, 3, or 4 day Resort Package
- 25% off all BellSouth Mobility wireless accessories up to \$100.



#BYNLGQZ \*\*\*\*\* 3-DIGIT 331  
 #10023490212#  
 SAMUEL ROBERTS  
 JOSEPH VERNON  
 942 NE 199TH ST APT 101  
 MIAMI, FL 33179-3022

Select Business Account: 305-651-2230  
 Member ID Number: 1002349021  
 Member Since: 07/01  
 Statement Period: 07/01 - 09/01

If the contact person for your company has changed, please call 1-800-290-3333 to update your account information.

> **fyi**

**Q. MY AD BUDGET IS LIMITED - HOW CAN I GET THE MOST BANG FOR MY BUCK?**

A. Save up to 25% on a customized Business Builder Package\* by mixing and matching your choice of online and print advertising from The Real White Pages\* and The Real Yellow Pages\* from BellSouth. Reach more ready-to-buy shoppers for less. New advertisers only. Call 1-800-807-3823 ext. 132 before 12/31/01. \*Some restrictions apply.

**Q. HOW DO I FIND OUT ABOUT OTHER DISCOUNT PROGRAMS FROM BELL SOUTH?**

A. Go to [www.bellsouth.com/smallbusiness](http://www.bellsouth.com/smallbusiness) and click on the "Savings and Rewards" icon to find out if you qualify — you could save up to 20% off your monthly phone bill!

> **realtime**

To access your account online, visit [www.bellsouthselectbusiness.com](http://www.bellsouthselectbusiness.com)  
 First-time access password: G88Y46

0314

> **summary**

July — September 2001

PREVIOUS BALANCE	POINTS EARNED THIS QUARTER	ADJUSTMENTS / BONUS POINTS	POINTS REDEEMED THIS QUARTER	NEW POINT BALANCE
0	0	500	0	500

© 2001 BellSouth Select, Inc. All Rights Reserved. BellSouth trademarks and service marks are the property of BellSouth Intellectual Property Corporation. All other trademarks are the property of their respective owners.

CUT HERE, FOLD AND RETURN BOTTOM PORTION

> **redeem**

REDEEM YOUR POINTS TODAY—CALL 1-800-290-3333 • FAX TO 1-800-309-3333 • MAIL IN ENCLOSED ENVELOPE

ITEM NUMBER	PRODUCTS	POINTS NEEDED	QUANTITY ORDERED
143	6 Months BellSouth Inside Wire Maintenance — per line**	500	_____
144	6 Months BellSouth Equipment Maintenance — per product**	500	_____
156	Howard Miller® Versatile Desk Clock	920	_____
071	3 Months BellSouth Site Builder**	1,000	_____
178	\$25 Cash*	1,000	_____
152	\$30 BellSouth® Prepaid Phone Card	1,000	_____
157	Flexlight Computer Light	1,400	_____
074	BusinessWeek 51-Week Subscription	1,600	_____
072	3 Months BellSouth Shared Web Hosting**	2,000	_____
179	\$50 Cash*	2,000	_____
146	\$50 Off Existing Cingular™ Wireless Services	2,000	_____
158	\$60 Off New Cingular™ Wireless Activation**	2,000	_____
001	\$75 BellSouth® Prepaid Phone Card	2,000	_____
049	Achiever Cross-Cut Shredder	2,425	_____
180	\$100 Cash*	4,000	_____
023	IBM® 2.4 GHz Cordless Phone	4,400	_____
004	Siemens Gigaset® 2400 (Handset Only)	4,600	_____
147	GBC® Bates® Electric Punch	4,800	_____
020	Motorola® Jazz™ Alphanumeric Pager	6,300	_____
079	Samsonite® Ultralite® 4 22" Upright Carry-On	6,400	_____
076	2 Months BellSouth® FastAccess® DSL**	7,600	_____
148	Panasonic® Gigarange Phone/Answering System	7,600	_____
155	Vtech 1211 Conference Phone	8,800	_____

\*A check from BellSouth Select.  
 \*\*New subscribers only.

Points Redeemed \_\_\_\_\_

ITEM NUMBER	PRODUCTS	POINTS NEEDED	QUANTITY ORDERED
181	\$250 Cash*	10,000	_____
021	Motorola® Talkabout® T900 2-Way Pager	10,000	_____
154	Philips External CD-RW Drive	10,400	_____
024	Toshiba® 13" TV/VCR Combination	10,560	_____
149	Toshiba® 19" TV/VCR Combination	12,400	_____
043	Siemens Gigaset® 2402 With 2 Handsets	13,160	_____
182	\$500 Cash*	20,000	_____
078	2 Months BellSouth® FastAccess® DSL — Multiple Computer Package**	20,400	_____
077	6 Months BellSouth® FastAccess® DSL	22,800	_____
150	Panasonic® Flatbed Multi-Function System	24,000	_____
152	Fuji Finepix 4800 Zoom Camera	29,200	_____
183	\$1,250 Cash*	50,000	_____

Points Redeemed \_\_\_\_\_

Redemptions will be reflected on your next statement. Products subject to availability. Some restrictions apply. See catalog for details. Certain product features may require the activation of network services. Service may not be available in all areas. Products arrive in 4-6 weeks. Shipping & handling included. Offers expire 12/31/01.

PLEASE PROVIDE YOUR EMAIL

EMAIL ADDRESS

JOSEPH VERNON  
 SAMUEL ROBERTS  
 ID NUMBER: 1002349021

@ BELL SOUTH

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0530

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> **fax**

BellSouth  
**Select Business™**  
Platinum

TO: DAISY WHITING, BELLSOUTH

FAX: 770-391-9485

FROM: Rick Tice, BellSouth Select Business Platinum

DATE: 10/02/01

RE: Redeem today for a \$100 American Express® Gift Cheque

**Thank you for your company's participation in the BellSouth Select Business™ Platinum program.** It's another way that choosing BellSouth pays off for your business.

In fact, every dollar you spend with BellSouth earns points good for dollars off your bill\* or valuable products and services.

**As of 9/1/01, you had a balance of 6,000 points. Why not exchange 4,000 of your points for a \$100 American Express® Gift Cheque? It's as good as cash – and all it takes is a call to the BellSouth Select Business Service Center at 1-800-290-3333 before 10/31/01.**

If you'd prefer, check out other choices at [www.bellsouthselectbusiness.com](http://www.bellsouthselectbusiness.com) and log in with your Member ID number: 1000265982 or phone number to see just how easy it is to redeem online.

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\*Applied to non-regulated portion of BellSouth bill.  
Dollars off will be displayed as a credit on your BellSouth telephone bill. Offer expires 10/31/01.  
501751 01 F335-003

0309

# Bill Credits

When Customers Redeem Points for Dollars off the Bill

Credit on the bill is awarded at:

Platinum

.025 x TBR

Silver

.025 x points earned

Points Accrued	Credit Received
2,000	\$50
5,000	\$125
10,000	\$250
20,000	\$500
50,000	\$1,250



amount of taxes, interest, penalties and cost that is a lien on said land.

Sec. 2. *Be it further enacted*, That the only fees for making a tax report under the provisions of this Act shall be \$1.50 to the clerk or clerk and master for issuing said statement, filing the certificate of said officials, making the clerk's or clerk and master's report and filing the same.

Sec. 3. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed February, 11, 1897.

MORGAN C. FITZPATRICK,  
*Speaker of the House of Representatives.*  
JOHN THOMPSON,  
*Speaker of the Senate.*

Approved February 12, 1897.

ROBT. L. TAYLOR,  
*Governor.*

## CHAPTER 10.

[HOUSE BILL No. 242.]

AN ACT to create a Railroad Commission in this State and define its duties and powers; to prohibit extortion, unjust discrimination and undue or unreasonable preferences by railroad companies and other persons operating railroads in this State, in their charges for the transportation of freight and passengers; to secure just and reasonable rates and charges for all such services; and to impose penalties and to provide adequate civil remedies for, and punish violations of, this Act, and to secure the due execution and enforcement of its provisions and all lawful orders, rules and regulations of the said Railroad Commission.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a commission is hereby created, consisting of three members, one from each Grand Division of the State, to be known as the "Railroad Commission of the State of Tennessee." Said Railroad Commissioners shall be State officers, and shall be appointed, first by the Governor and confirmed by the Senate immediately after the passage of this Act. They shall serve for two years, the term to be reckoned from January 1, 1897.

But the compensation of the Commissioners shall be computed from the date they enter upon the discharge of their official duties as Commissioners. At the regular election in November, 1898, they shall be elected by

Commission created.  
First election,  
Nov. 1898.

Terms of office.

the qualified voters of the State, and the one receiving the highest number of votes cast, shall serve six years, and the next highest four years, and the next highest two years; the term of office to begin on the first day of January following the election in November. And there shall be biennially after the election in November, 1898, one member elected to serve six years. If for any reason there should be a vacancy on the Board of Commissioners, the Governor is hereby authorized to fill such vacancy by appointment until the next regular election, when such vacancy shall be filled for the unexpired term.

Governor to fill vacancies.

To have office in the capitol.

Sec. 2. *Be it further enacted*, That the Railroad Commission shall be furnished a permanent office in the State Capitol, with all necessary furniture, stationery and supplies, to be paid for by the State on an itemized statement sworn to by the Chairman of the Commission;

Proviso.

*Provided*, That all plans shall be made out by the Secretary of State, Treasurer and Governor, who shall approve all bills for this purpose before they are paid.

Quorum and organization.

The Commission shall be furnished with the furniture and equipments of the late Board of Equalization. A majority of said Commissioners shall constitute a quorum for the transaction of business. Immediately after the appointment of the Commissioners by the Governor and confirmed by the Senate, they shall meet in Nashville and organize by the election of one of their members Chairman of the Commission. On the first Monday in January, 1899, and biennially thereafter, they shall meet in their office at Nashville and re-organize. After the Commission is organized, they shall appoint a Secretary.

Salaries.

Sec. 3. *Be it further enacted*, That the salary of each Commissioner shall be two thousand dollars (\$2,000) per annum, unless restrained by law from the performance of their duties as required by this Act, payable quarterly out of the State Treasury, on the warrant of the Comptroller, and the salary of the Secretary shall be fifteen hundred (\$1,500) dollars per annum, payable in the same manner as the salaries of the Commissioners;

Expenses.

*Provided*, That an amount not to exceed three thousand (\$3,000) dollars shall be allowed for the Board's traveling expenses; and an amount not to exceed one thousand (\$1,000) dollars shall be allowed for the traveling expenses of the Secretary.

No member of this General Assembly shall be eligible to election on the Commission to be elected by this

General Assembly or to the position of Secretary to be chosen by the first Commission.

Sec. 4. *Be it further enacted*, That the Commissioners shall be resident citizens of this State and qualified voters under the Constitution and laws, and shall be not less than twenty-five years of age. Qualifications.

No Commissioner shall hold any other public office, under either the Government of the United States or the Government of this or any other State, nor shall any Commissioner, while acting as such Commissioner, engage in any business or occupation inconsistent with his duties as Commissioner. Shall not hold office or engage in business.

No person, who owns jointly or severally, any bonds, stocks or other property in any Railroad or Transportation Company, or who is an agent or employee in any way of any Railroad or Transportation Company, or who has any interest personally in any way or manner in any Railroad or Transportation Company, shall be eligible to serve as a member of the Railroad Commission. Restrictions.

Each of said Commissioners shall enter into a bond with two or more solvent securities, to be approved by the Governor, in the sum of \$20,000, payable to the State of Tennessee, conditioned upon the faithful performance of his duty. Bond.

Before entering upon the discharge of the duties of his office, each of said Commissioners shall make, subscribe to and file in the office of the Secretary of State, the following oath: Oath of office.

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Tennessee, and that I will faithfully discharge the duties of Railroad Commissioner according to the best of my ability; that I am not the owner of any stock or bonds of any Railroad or Transportation Company, or in any way, directly or indirectly, in the employment, or engaged in the management of any Railroad or Transportation Company."

Sec. 5. *Be it further enacted*, That the Commissioners, nor any one of them, shall directly or indirectly, accept any gift, gratuity, emolument or employment from any person or corporation owning or operating a Railroad, or from any officer, attorney, agent or employee of any Railroad Company; nor shall they or any one of them, directly or indirectly, solicit or request from, or recommend to any Railroad Company, or to any officer, attorney, agent or employee thereof, the appointment of any person to any place or position during their or his continuance in office. It shall be unlawful Not to accept favors or gratuities



for any Railroad Company or any officer, attorney, agent or employee thereof to give or offer to give, to the Commissioners any gift, gratuity, emolument, employment, place or appointment, for themselves or other persons; but said Commissioners shall be entitled to a pass or ticket over any and all lines of Railroads owned or operated by any corporation or company in Tennessee while such Commissioners are engaged in the discharge of their duties. And it shall be the duty of such Railroad Company to furnish the Commissioners with such pass or ticket when demanded.

Pass tickets.

Penalties

A violation of any of the provisions of this Section shall subject the persons or corporation so violating, to a fine of not less than one thousand dollars, and not more than five thousand, to be recovered by indictment as other penalties for violation of law are recovered. Any Commissioner convicted of a violation of any provision of this Section shall, in addition to the above penalty, be immediately dismissed from said office by the judgment of the court trying the cause.

Secretary.

Sec. 6. *Be it further enacted*, That it shall be the duty of the Secretary to keep a full and correct record of all the proceedings and transactions of said Commission and perform such other duties as the Commission may require.

The minutes shall be signed by each member of the Commission or by those present when any business is transacted.

Minutes and documents.

The minutes and all official documents of every kind shall be kept on file in the office of the Commissioners. A copy of any of their proceedings, or of any document on file in their office, when duly certified by the Chairman and Secretary of the Commission, shall be taken as evidence in the courts of this State. For a copy of any record on file in their office, they shall charge and receive the same fees that are charged by the Secretary of State for similar services and shall cover into the State Treasury any amount so received.

To be taken as evidence.

Meetings.

Sec. 7. *Be it further enacted*, That the Commissioners shall meet in their office at the Capitol as often as business may require, and shall remain in session until all business before them is disposed of, and shall hold other sessions at such times and places as may be necessary for the proper discharge of their duties, or as the convenience of the parties, in the judgment of the Commission, may require.

To fix freight and passenger rates.

Sec. 8. *Be it further enacted*, That authority is hereby vested in the Railroad Commission of Tennessee, and it is hereby made its duty, to supervise and fix the

rates, charges and regulations of Railroad freight and passenger tariffs and to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different Railroads in this State. The Commission shall have power to make all needed rules for its government and for its proceedings and regulate the mode and manner of all investigations and hearings of Railroad Companies, and other parties, before it, and to adopt and enforce such rules and regulations and modes of procedure as it may deem proper for the hearing and determination of all complaints made by any Railroad Company or other parties;

Rules and regulations.

*Provided*, That no person desiring to be present at any such investigation by said Commissioners shall be denied admission. The Commissioners shall inform themselves fully and thoroughly in regard to the affairs of every Railroad Company doing business in this State.

Proviso.

They shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning Railroads, and as often as may be necessary, furnish said blanks to each Railroad Company.

To furnish blanks.

Each Railroad Company receiving from the Commissioners any such blanks shall cause the same to be properly filled out, so as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure, and the said answer, duly sworn to by the proper officer of said company, shall be returned to said Commission at its office in Nashville within thirty days from the receipt of same. The Commission is hereby given full power and authority to examine the books and papers of the Railroad Companies and to examine under oath, the officers, agents and employees of said companies and any other persons, to procure the necessary information to intelligently and justly discharge their duties and carry out the provisions of this Act.

Railroad companies to fill out blanks.

Sec. 9. *Be it further enacted*, That they shall have power to examine, under oath, any person, or the directors, officers, agents and employees of any Railroad Corporation doing business in this State, concerning the management of its affairs, and to obtain information pursuant to this law; and shall have power to issue subpoenas for the attendance of witnesses, to compel the production of books and papers, and to administer oaths; and any person who shall neglect or refuse to obey the process of subpoenas issued by said Commis-

Power to take evidence.

Refusal to testify, etc., and penalty therefor.

sioners, or who being in attendance, shall refuse to testify, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not less than \$50 nor more than \$100, or by imprisonment not less than ten days nor more than fifty days, or both, in the discretion of the jury trying the case.

Each refusal to obey the subpoenas or to testify, shall constitute a separate offense.

Power to issue  
subpoenas.

Sec. 10. *Be it further enacted*, That the said Commission in making any examination or investigation provided for in this Act, shall have power to issue subpoenas for the attendance of witnesses by such rules as they may prescribe. Each witness who shall appear before the Commission, by order of the Commission, shall receive for his attendance the compensation now provided by law, which shall be paid by the State Treasurer on warrant of the Comptroller, upon the presentation of proper voucher sworn to by such witness, and approved by the Chairman of the Commission.

Compensation  
to witnesses

Proviso.

*Provided*, That no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any Railroad in this State or out of it, or who is in any way interested in any stock, bond, mortgage, security or earnings of any such road, or who shall be the agent or employee of such road, or an officer thereof when summoned at the instance of such Railroad; and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpoena, said Commission may issue an attachment for said witness, directed to any sheriff or constable of the State of Tennessee, and compel him to attend before the Commission and give his testimony upon such matters as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend, or to answer any question propounded to him, and which he would be required to answer if in court, the Commission shall have power to fine and imprison such witness for contempt in the same manner that the Judge of any court of competent jurisdiction might do under similar circumstances.

Recalcitrant  
witnesses.

Railroad em-  
ployees ex-  
empt from  
indictment.

No officer, agent, servant or employee of any Railroad Company, who shall appear and testify before the Commission under the provisions of this Act, or any civil or criminal proceedings instituted by them under the provisions of this Act, shall be liable to indictment or



presentment for any violation of this Act about which they so testify:

*Provided*, the Commission shall, in all cases, have a right in its discretion to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process issued under the provisions of this section or under any other provisions of this bill, shall receive such compensation as may be allowed by the Commission, not to exceed fees as now prescribed by law for similar services. Depositions may be taken

Sec. 11. *Be it further enacted*, That the Commission shall not require publicity to any contracts, leases or engagements obtained by them in their official capacity, if the interests of any company would thereby be injuriously affected, unless, in the judgment of the Commission, the public interest requires it.

Sec. 12. *Be it further enacted*, That it shall be the duty of each and every Railroad Company, corporation or individual, owning, operating or managing a Railroad, [to furnish to the] Commission at its office in Nashville, the monthly, quarterly and annual statements of the operations of their respective roads, if such reports are issued; if not, then they shall send such reports as may be issued at any special or regular time. The president or chief officer of each and every Railroad Company, corporation or individual, owning, operating or managing any Railroad in this State, shall on or before the first day of February of each year, make and transmit to the Commission at its office in Nashville, under oath of the president or chief officer of the company, a full and true statement of the affairs of said company as the same existed on the first day of the preceding January, in accordance with the direction and schedules prepared and furnished by the Commission. Roads to furnish statements.

Sec. 13. *Be it further enacted*, That any officer, agent or employee failing or refusing to make, under oath, any report required by the Commission, within the time required, or failing or refusing to answer fully under oath, if required, any inquiry propounded by the Commission, or who shall, in any way, hinder or obstruct the Commission, in the discharge of its duties, shall be guilty of a misdemeanor, and shall be fined for each offense not less than \$500 nor more than \$1,000. Failure or refusal, penalty for.

Sec. 14. *Be it further enacted*, That all railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared subject to the provisions of this Act, and all individuals, companies, corporations, trustees, receivers and lessees, owning, All roads subject to this Act.

operating and managing such railways for the transportation of freight and passengers, are hereby declared common carriers.

Special rates,  
rebates, etc.,  
unlawful.

Sec. 15. *Be it further enacted*, That if any such common carrier shall directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons, firm or corporation, a greater or less compensation for any services rendered in the transportation of any kind of property upon such railroads within this State than it charges, demands, collects or receives from any other person or persons, firms or corporations for doing for him or them a like service in the transportation of a like kind of property under substantially like circumstances and conditions, and if such common carriers make any preference between the parties aforesaid, in furnishing cars or motive power for the purpose aforesaid, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful.

Extortion un-  
lawful.

Sec. 16. *Be it further enacted*, That if any railroad corporation shall charge, collect or receive more than a just and reasonable rate of toll or compensation for the transportation of passengers or freight in this State, or for the use of any railroad car upon its track, or upon any track it has control of or the right to use in this State, it shall be deemed guilty of extortion, which is hereby prohibited and declared unlawful.

No preferences  
to be given.

Sec. 17. *Be it further enacted*, That it shall be unlawful for any corporation to make or give any undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage.

Overcharges  
unlawful.

Sec. 18. *Be it further enacted*, That if any person owning or operating a railroad in this State, or any common carrier, shall charge or receive any greater compensation in the aggregate for the transportation of passengers or property of like kind, under substantially like circumstances and conditions, for a shorter than a longer distance over the same line in the same direction, the shorter being included within the longer distance, such person or common carrier shall, for each offense, be guilty of a misdemeanor and fined, not less than \$100 nor more than \$500.

Penalty.

Extortion,  
how punished

Sec. 19. *Be it further enacted*, That any Railroad corporation that shall be guilty of extortion or unjust dis-



crimination, or of giving to any person or locality, or to any description of traffic an undue or unreasonable preference or advantage, shall, upon conviction, be fined in any sum not less than \$500 nor more than \$2,000.

Sec. 20. *Be it further enacted*, That suits may be brought by any person against any Railroad Company, owning or operating a railroad in Tennessee, for the violation of Sections 15, 16, 17 and 18, of this Act before any court having jurisdiction to try the same. And it shall be the duty of the Attorneys General of the State to bring suit in the name of the State on the relation of the Commissioners, in any court having jurisdiction thereof, to recover any penalty imposed by the provisions of this Act.

How suits may be brought.

Sec. 21. *Be it further enacted*, That the Railroad Commission shall have power, and it is hereby made its duty, to investigate all through freight rates on all railroads in Tennessee, and when the same are, in the opinion of the Commission, excessive, or laid or levied in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the Railroad are to be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed, or the proper corrections are not made according to the request of the Commission, the latter is instructed to notify the Interstate Commerce Commission and to apply to it for relief.

Must investigate through rates.

Sec. 22. *Be it further enacted*, That it shall be the duty of all persons or corporations who shall own or operate a railroad in this State, within thirty days after the passage of this Act, to furnish the Commission with its tariff of charges for transportation of every kind, and it shall be the duty of said Commission to revise said tariff charges so furnished, and determine whether or not, and in what particular, if any, said charges are more than just compensation for the service to be rendered, and whether or not unjust discrimination is made in such tariff of charges against any person, locality or corporation, and when such charges are corrected, as provided by said Commission, the Commission shall then append a certificate of its approval to said tariff of charges; but in revising or establishing any and every tariff of charges, it shall be the duty of said Commission to take into consideration the character and nature of the service to be performed and the entire business of such railroad, together with its earnings from the passenger and other traffic, and any other facts and circumstances which may affect the question of just and

Duty of corporations to furnish tariffs.

Duties of commissioners.

To supervise  
tariff of  
charges.

Companies to  
post rates.

Discrimina-  
tions forbid-  
den.

Rebates, how  
punished.

Reduced and  
special rates.

reasonable rates, and shall so revise such tariffs as to allow a fair and just compensation, having due regard to the rights and interests of both shipper and carrier, and in view of all the circumstances and conditions existing at the time; and it shall be the duty of said Commission to exercise a careful and watchful supervision over every such tariff of charges from time to time as justice to the public and each of said railroads may require, and to increase or reduce any of said rates according as experience and business operations may show to be just; and said Commission shall accordingly fix the tariffs of charges for these railroads failing to furnish tariff of charges as above required. And it shall be the duty of said Railroad Companies or other persons operating any railroad in this State, to post, at each of its depots all rates, schedules, and tariffs for the transportation of passengers and freights, made or approved by said Railroad Commission, with said certificate of approval, in some conspicuous place at the depot, and it shall be unlawful for any such person or corporation to make any rebate or reduction from such tariffs in favor of any person, locality or corporation, which shall not be made in favor of all other persons, localities or corporations by a change in such published rates, except as may be allowed by the Commission; and when any change is contemplated to be made in the schedule of passenger or freight rates of any railroad by the Commission, whether by revising rates already fixed by the Railroad Commission or by fixing and establishing rates originally. Said Commission shall give the person or corporation operating or managing said railroad notice in writing at least ten days before the change, of the time and place at which such change will be considered.

Sec. 23. *Be it further enacted*, That any person or corporation as aforesaid, who shall make any reduction or rebate prohibited by this Act, without approval of the Commission, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than \$100 nor more than \$500.

Sec. 24. *Be it further enacted*, That this Act shall not prevent any Railroad Company from transporting freight free of charge, or at reduced rates, for any religious, charitable or benevolent purpose, or for any industrial exposition, fair or association of a public nature, or for transporting immigrants into this State, or persons prospecting with a view of locating or bring-

ing immigrants into this State, or for pleasure excursions. However, nothing in this Act shall be construed so as to prevent the railroads of this State from giving special rates to encourage infant manufacturing industries, and for the encouragement of any other new business or industry, or for the transportation of any perishable goods;

*Provided*, That such transportation shall be furnished without discrimination, and under such rules and regulations as the Commission may prescribe.

Sec. 25. *Be it further enacted*, That if any Railroad Company, corporation or lessee shall wilfully violate any of the provisions of this Act, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it by the provisions of this Act for which penalty has not herein been provided, for each and every such act of violation it shall pay to the State of Tennessee a penalty of not less than \$50 nor more than \$100.

Penalty for violation.

Sec. 26. *Be it further enacted*, That the Circuit and Chancery Courts and Justices of the Peace of this State shall have jurisdiction of all suits of a civil nature arising under the provisions of this Act, according to the nature of the suit and the amount involved, as now provided by law; and that the Circuit Courts shall have jurisdiction of all criminal proceedings arising under this Act, except in counties where there are special criminal courts, and in such counties such criminal courts shall have jurisdiction. Indictments or presentments under this Act shall be preferred only upon recommendation or request of the Railroad Commission filed in the court having jurisdiction of the offense. And the Railroad Commission or any member thereof, or any person now authorized by law to prosecute criminal cases, may be prosecutor.

Jurisdiction of suits under this Act.

All prosecutions or actions under this Act shall be commenced within one year after the offense shall have been committed or the cause of action shall have accrued, or the same shall be barred.

Limitation.

All penalties herein provided for shall be recovered, and suit thereon shall be brought, in the name of the State of Tennessee in the proper court having jurisdiction. All penalties and fines recovered by the State under this Act shall be paid into the State Treasury. The Attorney General of the Judicial Circuit in which the suit is to be instituted shall prosecute suits brought in the name of the State under this Act.

Fines to State Treasurer.



Commission-  
ers to see law  
enforced.

Sec. 27. *Be it further enacted*, That it is hereby made the duty of the Railroad Commission to see that the provisions of this Act and all laws of this State concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted, and all penalties due the State therefor recovered and collected. And said Commission shall report all such violations with the facts in their possession to the District Attorney General of the Judicial Circuit in which proceedings are to be instituted, and request him to institute the proper proceedings. All suits between the State and any railroad shall have precedence in all courts over all other suits pending therein, and the judges of said courts are hereby directed to advance such suits on their dockets.

Unjust dis-  
crimination  
defined.

Sec. 28. *Be it further enacted*, That every Railroad Company that shall fail or refuse, under such regulations as may be prescribed by the Commission, to receive and transport without delay or discrimination, the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad or other common carrier by water or land, and every railroad which shall, under such regulations as may be prescribed by the Commission, fail or refuse to transport and deliver without discrimination, any passengers, tonnage, cars loaded or empty, destined to any point on or over the line of any connecting line of railroad, or shall refuse to receive and transport without delay any freight consigned to any person, firm, corporation, or common carrier at any point on its line or at any point on any connecting line or railroad, shall be deemed guilty of unjust discrimination;

*Provided*, That perishable freight of all kinds and live stock shall have precedence of shipment.

To confer with  
other com-  
missions.

Sec. 29. *Be it further enacted*, That it shall be the duty of the Railroad Commission, by correspondence, conventions or otherwise, to confer with the Railroad Commissioners of other States and the Interstate Commerce Commission, and from such persons from States which have no Railroad Commission, as the Governor of such States may appoint, for the purpose of agreeing, if practicable, upon a draft of statutes to be submitted to the Legislature of each State, which shall secure uniform control of railroad transportation in the several States, and from one State into or through another State, as will best subserve the interest of trade and commerce of the whole country, and said Commission

shall include in their annual report to the Governor an abstract of the proceedings of any such conference or convention.

Sec. 30. *Be it further enacted*, That the provisions of this Act shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this State; and this Act shall not apply to street railways, nor to suburban or belt lines of railways in or near cities and towns.

Act operative only in this State.

Sec. 31. *Be it further enacted*, That the Railroad Commission shall, annually, on the first day of January, make a report to the Governor of all matters relating to their office for the preceding year, and such as will disclose the practical workings of the railroads in this State, and such suggestions in relation thereto as they may deem necessary and proper, together with the minutes of all their meetings, and shall have printed and lay before each Legislature five hundred copies of their reports for the two preceding years.

Annual reports to the Governor.

Sec. 32. *Be it further enacted*, That it is hereby made the duty of said Commission to perform all duties imposed upon it by the provisions of this Act, and see that the railroads shall comply with all such regulations and orders as it may reasonably and lawfully make under the provisions of this statute, and in case any Railroad Company shall fail and refuse to comply with such reasonable and lawful regulations and orders, it shall be the duty of said Commission to enforce the same, and power is hereby given said Commission to enforce the same by mandamus or mandatory injunction, or by other summary proceedings provided for by law, and in all such proceedings the orders and regulations, rates and tariffs made and fixed by the Commission pursuant to this Act, shall be taken and treated as prima facie, reasonable and valid, and it is hereby made the duty of the courts having jurisdiction in such proceedings to hear and determine all such summary causes as speedily as practicable, giving preference as in revenue causes.

Duties and powers of commission.

Sec. 33. *Be it further enacted*, That the Commission created by this Act shall be empowered to suspend Section 18 of this Act, when in their opinion the conditions are such that such suspension will be beneficial and to the best interest of the people and all whom it may concern.

May suspend Sec. 18 of this Act.

Sec. 34. *Be it further enacted*, That where any city or town in this State has competition existing in freight rates between railroads and rivers, it shall be the duty

Rail and river competition.

of the Railroad Commission provided for in this Act to regulate the freight rates of all railroads in cities and towns so situated, according to the rates fixed and charged by river transportation companies in competition with such railroads.

Repeal.

Sec. 35. *Be it further enacted*, That all laws in conflict with this Act are hereby repealed, and that this Act take effect from and after its passage, the public welfare requiring it.

Passed March 24, 1897. Amendments receded from April 2, 1897.

MORGAN C. FITZPATRICK,  
*Speaker of the House of Representatives.*  
JOHN THOMPSON,  
*Speaker of the Senate.*

Approved, April 7, 1897.

ROBT. L. TAYLOR,  
*Governor.*

## CHAPTER II.

[HOUSE BILL NO. 53.]

AN ACT to authorize the people to decide by vote whether they will call a Constitutional Convention, and to provide for the submission of said question to the voters of the State and the announcement of the result, and to repeal an Act entitled, "An Act to authorize the people to decide by vote whether they will call a Constitutional Convention," approved September 24, 1896, being Chapter 1 of the Acts of the General Assembly of the State of Tennessee, passed September 23, 1896, at the Extra Session of 1896.

Preamble.

Whereas, Under our Constitution the right of the people to alter, reform or abolish the same is fully recognized, and,

Whereas, In the opinion of the General Assembly, the public exigencies do now demand the exercise of these several powers on the part of the people of this State, and,

Whereas, By Article XI., Section 3 of the present Constitution, power is given to the Legislature to submit to the people the question whether a Constitutional Convention shall be called; therefore,

Election  
authorized.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee*; That all the legal voters under existing laws of this State are hereby authorized to assemble on the first Thursday in August, 1897, at the